

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In Re:)	
)	
RODOLFO MAGANA and SOFIA	)	Chapter 7
ESQUIVEL,	)	Case No. 19-00662
	)	Hon. Timothy A. Barnes
)	
<u>Debtors.</u>)	
THE CHICAGO REGIONAL COUNCIL)	
OF CARPENTERS PENSION FUND,)	
THE CHICAGO REGIONAL COUNCIL	)	Adversary Proceeding
OF CARPENTERS WELFARE FUND,	)	Case No. 19-00971
THE CHICAGO AND NORTHEAST	)	Hon. Timothy A. Barnes
ILLINOIS REGIONAL COUNCIL OF)	
CARPENTERS APPRENTICE AND	)	Room 744
TRAINEE PROGRAM, AND)	
LABOR/MANAGEMENT UNION)	
CARPENTRY COOPERATION)	
PROMOTION FUND,)	
)	
Plaintiffs,)	
)	
v.	)	Hearing Date:
	)	July 6, 2022
RODOLFO MAGANA and SOFIA	)	9:00AM
ESQUIVEL,)	
)	
<u>Defendants.</u>)	

NOTICE OF MOTION

TO: See attached Service List

PLEASE TAKE NOTICE that on **Wednesday, July 6, 2022 at 9:00AM**, or as soon thereafter as counsel may be heard, the Chicago Regional Council of Carpenters Benefit Funds, through their counsel, Bruce C. Scalabrino and Gregg J. Simon of the law firm Scalabrino & Arnoff, LLP, will appear before the Honorable Timothy A. Barnes, or any judge sitting in that judge's place, and shall then and there present the attached **PLAINTIFFS' MOTION TO APPROVE COMPROMISE AND SETTLEMENT WITH DEBTORS PURSUANT TO 11 U.S.C. § 105(A)**, a copy of which is attached hereto and hereby served upon you.

This motion will be presented and heard electronically using Zoom for Government. No personal appearance in court is necessary or permitted. To appear and be heard on the motion, you must do the following:

To appear by video, use this link: <https://www.zoomgov.com/>. Then enter the meeting ID and password.

To appear by telephone, call Zoom for Government at 1-669-254-5252 or 1-646-828-7666. Then enter the meeting ID and passcode.

Meeting ID and password. The meeting ID for this hearing is 161 329 5276 and the password is 433658. The meeting ID and password can also be found on the judge's page on the court's web site.

If you object to this motion and want it called on the presentment date above, you must file a Notice of Objection no later than two (2) business days before that date. If a Notice of Objection is timely filed, the motion will be called on the presentment date. If no Notice of Objection is timely filed, the court may grant the motion in advance without a hearing.

**CHICAGO REGIONAL COUNCIL OF
CARPENTERS BENEFIT FUNDS,**

**By: /s/Bruce C. Scalabrino
One of their attorneys**

**Bruce C. Scalabrino (ARDC 06193809)
Gregg J. Simon (ARDC 06216852)
SCALAMBRINO & ARNOFF, LLP
105 West Madison Street
Suite 810
Chicago, Illinois 60602
(312) 629-0545**

CERTIFICATE OF SERVICE

Bruce C. Scalabrino, an attorney, states that he served a copy of the foregoing **Notice of Motion** and **PLAINTIFFS' MOTION TO APPROVE COMPROMISE AND SETTLEMENT WITH DEBTORS PURSUANT TO 11 U.S.C. § 105(A)** upon all the individuals at the addresses listed on the attached Service List, as indicated therein, either via the Case Management/Electronic Case File (CM/ECF) system or Regular U.S. Mail, proper postage prepaid, by depositing the same in the U.S. Post Office Box located at 105 West Madison Street, Chicago, Illinois on June 13, 2022 before the hour of 5:00PM.

**/s/Bruce C. Scalabrino
Bruce C. Scalabrino**

SERVICE LIST

Served via CM/ECF

Mr. Gus A. Paloian
Seyfarth, Shaw
233 S. Wacker Drive
Suite 8000
Chicago, Illinois 60606

Mr. Patrick S. Layng
Office of the U.S. Trustee
Region 11
219 South Dearborn Street, Room 873
Chicago, IL 60604

Mr. David P. Lloyd
David P. Lloyd, Ltd.
615B S. La Grange Road
La Grange, Illinois 60525

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In Re:)	
)	
RODOLFO MAGANA and SOFIA	)	Chapter 7
ESQUIVEL,	)	Case No. 19-00662
	)	Hon. Timothy A. Barnes
)	
Debtors.)	
THE CHICAGO REGIONAL COUNCIL)	
OF CARPENTERS PENSION FUND,)	
THE CHICAGO REGIONAL COUNCIL	)	Adversary Proceeding
OF CARPENTERS WELFARE FUND,	)	Case No. 19-00971
THE CHICAGO AND NORTHEAST	)	Hon. Timothy A. Barnes
ILLINOIS REGIONAL COUNCIL OF)	
CARPENTERS APPRENTICE AND	)	Room 744
TRAINEE PROGRAM, AND)	
LABOR/MANAGEMENT UNION)	
CARPENTRY COOPERATION)	
PROMOTION FUND,)	
)	
Plaintiffs,)	
)	
v.	)	Hearing Date:
	)	July 6, 2022
RODOLFO MAGANA and SOFIA	)	9:00AM
ESQUIVEL,)	
)	
Defendants.)	

**PLAINTIFFS' MOTION TO APPROVE COMPROMISE AND
SETTLEMENT WITH DEBTORS PURSUANT TO 11 U.S.C. §105(a)**

Plaintiffs, the Chicago Regional Council of Carpenters Pension Fund, n/k/a the Mid-America Carpenters Regional Council (MACRC) Pension Fund; the Chicago Regional Council of Carpenters Welfare Fund, n/k/a the Mid-America Carpenters Regional Council (MACRC) Health Fund; the Chicago and Northeast Illinois Regional Council of Carpenters Apprentice and Trainee Program, n/k/a the Mid-America Carpenters Regional Council (MACRC) Apprentice and Trainee Program; and the Labor/Management Union Carpentry Cooperation Promotion Fund

(collectively, the “Funds”), through their counsel, Bruce C. Scalabrino and Gregg J. Simon of the law firm of Scalabrino & Arnoff, LLP, for their motion to approve their settlement agreement with Rodolfo Magana (“Magana”) and Sofia Esquivel’s (“Esquivel”)(jointly, “Debtors”), pursuant to 11 U.S.C. § 105(a), state the following:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(I) and (J) and the matters alleged herein are properly referred to this court by the United States District Court in accordance with 28 U.S.C. §157(a). Venue is proper pursuant to 28 U.S.C. §1409(a).

BACKGROUND

2. On January 9, 2019 (the “Petition Date”), Debtors filed a voluntary petition for relief under Title 11, Chapter 7 of the Bankruptcy Code (the “Bankruptcy Case”).

3. On October 14, 2019, the Funds initiated this adversary proceeding against Debtors by filing a complaint objecting to the dischargeability of Debtors’ debts to the Funds pursuant to 11 U.S.C. §§523(a)(2)(A) (Count IV), 523(a)(4) (Count V), and 523(a)(6) (Count VI) (the “Section 523 Claims”), and to Debtors’ receipt of a discharge pursuant to 11 U.S.C. §§727(a)(2)(A) (Count I), 727(a)(3) (Count II), and 727(a)(4)(A) (Count III) (the “Section 727 Claims”). The Funds filed a first amended complaint against Debtors on December 16, 2021 (the “Amended Complaint”), within which the Funds included additional allegations against Debtors.

4. Debtor filed an answer to the Amended Complaint on April 26, 2022.

5. The Funds and Debtors have agreed to settle their issues related to the Amended Complaint, pursuant to the Settlement Agreement executed by the parties dated May 31, 2022, a true and correct copy of which is attached hereto as Exhibit A.

TERMS OF THE SETTLEMENT AGREEMENT

6. The Settlement Agreement provides, among other things, that:¹

(a) Debtors agree that they are jointly and severally liable for the judgments entered in *Chicago Regional Council of Carpenters Pension Fund, et al., v. Galomex Corporation, an Illinois corporation, and Walls Services Group, LLC, an Illinois limited liability company*, United States District Court, Northern District of Illinois, Eastern Division, Case No. 17 cv 592, on January 4, 2019 (against Galomex Corporation), September 16, 2019 (against Walls Services Group, LLC), and on August 13, 2020 (against Wall Services Specialty Group Corp.);

(b) The Debtors consent to the entry of judgment, finding the sum of \$3,051,992.75 (the “Settlement Amount”) to be nondischargeable pursuant to 11 U.S.C. §§523(a)(2)(A), 523(a)(4), and 523(a)(6), against Debtors, and in favor of the Funds, as to the Funds’ Section 523 Claims (the “Consent Judgment”);

(c) Debtors stipulate, agree, waive any and all defenses, set offs, and counterclaims and consents, and confess to the entry of a judgment against them in the amount of the Settlement Amount based on the Consent Judgment in any action filed by the Funds in state and/or federal court; and

¹This paragraph sets forth a summary of some of the terms and conditions of the Settlement Agreement and is not intended as a comprehensive description thereof. To the extent that a conflict exists between the description of the Settlement Agreement contained within this Motion and the Settlement Agreement itself, the terms and conditions of the Settlement Agreement govern.

(d) The Funds shall dismiss their 11 U.S.C. §§727(a)(2)(A), 727(a)(3), and 727(a)(4)(A) claims against Debtors.

ARGUMENT

7. Section 105(a)² of the Bankruptcy Code authorizes a bankruptcy judge to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” It also and grants this Court extensive equitable powers that bankruptcy courts need to be able to perform their statutory duties. *In re Condor Flugdienst GmbH*, 627 B.R. 366, 373-74 (Bankr. N.D. Ill. 2021)(relying on *Caesars Entm't Operating Co., Inc. v. BOKF, N.A.*, 808 F.3d 1186, 1188 (7th Cir. 2015).

8. The decision to approve a settlement agreement lies within the discretion of the bankruptcy court. *In re Holly Marine Towing, Inc.*, 669 F.3d 796, 799 (7th Cir. 2012). A bankruptcy court should approve a settlement agreement so long as it is in the best interest of a debtor’s estate. *Id.*, at 801.

9. In determining whether a settlement is in the best interest of the bankruptcy estate, courts must compare the settlement’s terms with the litigation’s costs and benefits. If the settlement falls within the “reasonable range of possible litigation outcomes,” the settlement passes the “best interests” test. *Id.* (quoting *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421 426 (7th Cir. 2007).

10. In this case, the Settlement Agreement is fair, equitable and in the best interests of the estate and should be approved because it will enable the Funds and Debtors to avoid further considerable litigation costs and Court time related to the Amended Complaint. The settlement is within the reasonable range of possible outcomes if the case went to trial.

² The Funds cannot rely upon Federal Rule of Bankruptcy Procedure 9019(a) in this matter as that Rule limits the bringing of a motion to approve a compromise or settlement to a trustee or debtor-in-possession.

11. In summary, approval of the Settlement Agreement is in the best interests of the Funds, Debtors, all of their unsecured creditors, and the estate.

WHEREFORE, the Chicago Regional Council of Carpenters Pension Fund, n/k/a the Mid-America Carpenters Regional Council (MACRC) Pension Fund; the Chicago Regional Council of Carpenters Welfare Fund, n/k/a the Mid-America Carpenters Regional Council (MACRC) Health Fund; the Chicago and Northeast Illinois Regional Council of Carpenters Apprentice and Trainee Program, n/k/a the Mid-America Carpenters Regional Council (MACRC) Apprentice and Trainee Program; and the Labor/Management Union Carpentry Cooperation Promotion Fund request that this Court enter an order:

- a. approving the Settlement Agreement with Debtors pursuant to 11 U.S.C. § 105(a); and
- b. for such further and other relief as is just and equitable.

**CHICAGO REGIONAL COUNCIL OF
CARPENTERS PENSION FUND,
CHICAGO REGIONAL COUNCIL OF
CARPENTERS WELFARE FUND,
CHICAGO AND NORTHEAST
ILLINOIS REGIONAL COUNCIL OF
CARPENTERS APPRENTICE AND
TRAINEE PROGRAM, and
LABOR/MANAGEMENT UNION
CARPENTRY COOPERATION
PROMOTION FUND,**

**By: /s/ Bruce C. Scalabrino
One of Their Attorneys**

**Bruce C. Scalabrino (ARDC 06193809)
Gregg J. Simon (ARDC 06216852)
SCALAMBRINO & ARNOFF, LLP
105 West Madison Street
Suite 810
Chicago, Illinois 60602
(312) 629-0545
Email: bcs@sacounsel.com
gjs@sacounsel.com**